

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes the Order denying claimant's request for benefits for a hernia should be affirmed.

Respondent, a heating and air conditioning company, employed claimant as a service technician. Claimant alleges he injured his back and abdomen in May 2003, while lifting a compressor. Claimant reported the back injury to respondent and later sought treatment at the Mount Carmel Regional Medical Center. Claimant also saw a chiropractor, Dr. Voss, who treated claimant's back. Sometime during the summer of 2003, Dr. Voss released claimant from his care.

Claimant continued working for respondent. And following the May 2003 incident, according to claimant, his back symptoms gradually worsened and his abdomen "got way worse."<sup>1</sup>

Claimant did not work for respondent after July 8, 2004. Claimant testified that he assumed his ongoing abdominal pain was from a pulled muscle. When his symptoms did not resolve, claimant sought treatment from Dr. Dwane M. Beckenhauer. The doctor diagnosed a hernia and recommended surgery.

Dr. Beckenhauer first saw claimant on September 15, 2004. Moreover, the doctor's notes from that visit indicate claimant provided a history that over the past couple of weeks he had been noticing more pain on the right side of his groin and not so much pain on the left. The doctor's office notes from that date read, in part:

Mr. VanHouten was seen today for evaluation of a cystic mass in his left testicle. However, Mike has been noticing the past couple of weeks that he has been having more pain on the right side and not so much on the left side. He does not recall any particular injury although he has been doing quite a bit of heavy lifting and people have been telling him that he has been lifting too much. He has not had any change in his bowel habits and he has had no nausea or vomiting.<sup>2</sup>

Respondent's owner, Mike Turner, also testified at the preliminary hearing. Mr. Turner denied claimant's assertion that claimant complained of his abdomen during the year that claimant worked following the May 2003 incident.

In short, claimant worked for respondent for more than a year after the May 2003 lifting incident and did not seek any medical treatment for the alleged pain in his abdomen until more than two months following his leaving respondent's employ. Moreover, the medical records from Dr. Beckenhauer and from the Mount Carmel Regional Medical Center do not substantiate claimant's allegations. And there is no expert medical opinion

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<sup>1</sup> P.H. Trans. at 7.

<sup>2</sup> *Id.*, Cl. Ex. 1.

to support claimant's contentions. Judge Hursh observed both claimant and Mr. Turner testify and the Judge rejected claimant's testimony.

At this juncture, the Board adopts the Judge's finding that claimant has failed to prove he developed a hernia due to the work he performed for respondent. The preliminary hearing Order should be affirmed.

As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.<sup>3</sup>

**WHEREFORE**, the Board affirms the March 30, 2005, Order entered by Judge Hursh.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May, 2005.

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BOARD MEMBER

c: William L. Phalen, Attorney for Claimant  
James K. Blickhan, Attorney for Respondent and its Insurance Carrier  
Kenneth J. Hursh, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>3</sup> K.S.A. 44-534a(a)(2).